FCC 95-51

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re	)	
Amendment of Part 74 of the Commission's Rules With Regard to the Instructional Television Fixed Service	)	MM Docket No. 93-24

REPORT AND ORDER

Adopted: February 7, 1995 Released: February 7, 1995

By the Commission:

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1. By this Report and Order, the Commission adopts rules that will increase the efficiency of our processing of applications for new Instructional Television Fixed Service (ITFS) stations, major amendments to such applications, and major changes to existing stations.[1] We started this proceeding by seeking comment on a new filing system for such applications. In response to the comments received, we requested further comment on several additional proposals intended to increase the efficiency, and curtail potential abuse, of our application processes.[2] We decline to adopt some of the proposals advanced by the commenters to deter speculative filings. However, we believe that, because an ITFS window filing procedure enhanced by an electronic filing and processing system as proposed in our outstanding MDS rulemaking proceeding[3] and by the other modifications adopted herein, will result in a more efficient and effective application processing system, such improvement in expediting new and improved ITFS service and prompting the development of wireless cable service should adequately serve to deter speculative filings in the future.

THE WINDOW FILING SYSTEM

General Issues

2. Our goal in this proceeding has been to enhance the efficiency of our processing of ITFS applications. During the past decade, applicants for new ITFS stations or major changes in existing stations have been subject to an A/B cut-off procedure.[4] We questioned in

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[1] The ITFS service is not subject to competitive bidding. Even if ITFS licensees receive payments from MDS licensees for use of ITFS spectrum, they do not receive compensation from "subscribers" as that term is used in Section 309(j) of the Communications Act, as amended, 47 U.S.C. § 309(j). See H.R. Rep. No. 213, 103d Cong., 1st Sess. (1993) at 481-82; see also Second Report and Order in PP Docket No. 93-253, 9 FCC Rcd 2348, 2352, n. 10 (1994).

[2] A list of commenters can be found in Appendix A.

[3] See Notice of Proposed Rulemaking in MM Docket No. 94-131 and PP Docket No. 93-253, 59 Fed. Reg. 63743, 63748 (Dec. 9, 1994) (Wireless Cable Filing Procedures).

[4] This procedure involves placing the first application(s) accepted for filing and determined to be substantially complete on a public notice called an "A cut-off list." This list notifies the public that the application has been accepted and gives interested parties 60 days to file competing applications or petitions to deny. An applicant placed on the "A" cut-off list is required to make any major changes to its proposal before the end of the "A" cut-off period. After the "A" period expires, the staff places all substantially complete applications which were filed during that period and found to be mutually exclusive with any listed "A" application on a "B" list. This list notifies the public that the specified applications have been accepted for filing, and it provides 30 days for the filing of petitions to deny or minor amendments to those applications.

the Notice of Proposed Rulemaking in this proceeding whether this procedure is appropriate for the rapidly evolving ITFS service.[5] We stated in the Notice that the telecommunications environment has changed substantially since 1985, when the Commission instituted the A/B cut-off procedure.[6] We further observed that the overwhelming majority of tendered applications now include excess capacity lease agreements with wireless cable operators.[7] The Notice observed that these changes have fostered a substantial increase in the rate of applications filed for new ITFS stations or major changes in existing stations, creating a significant backlog of applications. We therefore proposed a window filing procedure to allow us to better control the flow of applications and improve processing efficiency.

3. Pursuant to our proposal, we would accept applications for new facilities and applications for major changes in existing facilities only during limited periods (or "windows").[8] We would place applications filed in the window that were not mutually exclusive with any other application, and that were found to be acceptable for filing, on a proposed grant list. We would then provide the immediately following 30 days for the submission of petitions to deny. Uncontested applications would then be granted, if in the public interest. With regard to mutually exclusive applications, we would similarly give 30-day Public Notice for the submission of petitions to deny. Thereafter, we would evaluate those applications under the existing comparative selection process. Any applications currently tendered but not yet placed on an "A" cut-off list would be treated as having been filed and cut off as of the close of the first filing window.

4. Most commenters generally supported the adoption of a window filing system. However, several also argued that other processing reforms are needed to address speculative

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[5] Notice of Proposed Rulemaking in MM Docket No. 93-24, 8 FCC Rcd 1275 (1993) (Notice).

[6] Id. at 1275, citing Second Report and Order in MM Docket No. 83-523, 101 FCC 2d 49 (1985).

[7] In 1983, the Commission authorized ITFS licensees to lease their excess channel capacity to wireless cable operators. Report and Order in Gen. Docket No. 80-112 (Instructional TV Fixed Service), 94 FCC 2d 1203 (1983). Now, more than 90% of recently filed applications contain an excess capacity lease, and the wireless cable lessee almost always pays for the construction of the ITFS facilities. Notice at 1276. Our use of the term "wireless cable" is not intended to suggest that it constitutes "cable" service for statutory or regulatory purposes.

[8] We would continue to accept at any time the filing of applications for minor changes, as defined by Section 74.911(a) of the Commission's Rules, 47 C.F.R. § 74.911(a), as amended herein.

filings and certain other potential abuses arising from the dramatic regulatory changes that have occurred in the ITFS service in the past several years.[9]

5. First, as noted above, in 1983 the Commission authorized ITFS licensees to lease their excess channel capacity to wireless cable operators. The Commission envisioned a revitalized ITFS service through the activation of underutilized ITFS channels resulting from the revenues which would be derived from the leasing of excess capacity by wireless cable operators. Since this initial action several years ago, the telecommunications environment has changed substantially, as the number and types of video program providers has increased. Thus, we have amended our regulations and policies significantly in order to further stimulate the growth of ITFS and wireless cable services in that new environment. Specifically, we have modified the minimum programming requirements for new ITFS operators,[10] authorized 15-mile interference protection for ITFS licensees which lease excess capacity for wireless cable operations,[11] authorized the use of channel mapping and channel loading technologies by ITFS licensees and wireless cable lessees[12], and modified our "ready recapture" requirement with regard to excess channel capacity leasing by eliminating unduly restrictive time-of-day and day-of-week regulations.[13] The response to these changes by both educational and wireless cable entities has been enthusiastic, creating the environment necessary for building and maintaining robust ITFS and wireless cable services. By February 25, 1993, when we imposed a freeze on applications for new ITFS stations, more than 800 applications were under review by the staff. Not only did many of these applications require complex technical analysis, but more than 90% of these applications contained excess capacity leases and/or were mutually exclusive.

6. Because the viability of competing wireless cable operators is dependent upon the accumulation of a significant number of channels in a market (critical mass), we were informed that many wireless cable operators were engaging in abusive filing practices intended to impede the inauguration of new or improved ITFS and wireless cable service. For

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[9] Order and Further Notice of Proposed Rulemaking in MM Docket No. 93-24, 9 FCC Rcd 3348 (1994) (Further Notice). To avoid potential confusion with the initial set of comments, we shall refer to comments submitted in response to the Further Notice as Further Comments and Further Reply Comments.

[10] Report and Order in Gen. Docket Nos. 90-54 and 80-113 (Wireless Cable Order) 5 FCC Rcd 6410 (1990).

[11] Order on Reconsideration in Gen. Docket Nos. 90-54 and 80-113, 6 FCC Rcd 6764 (1991).

[12] Id. at 6774; Report and Order in MM Docket No. 93-106, 9 FCC Rcd 3360 (1994) (Channel Loading Report and Order).

[13] Order on Reconsideration, 6 FCC Rcd at 6774..

example, some commenters alleged that many wireless cable-supported ITFS applicants submit a large number of applications simply to enable bargaining with other wireless cable entities seeking to construct a viable wireless cable system. Thus, these commenters proposed a cap of applications associated with the same wireless cable entity. Other commenters advocated requiring applicants or their proposed wireless cable lessees to submit with their applications proof of their financial ability to construct. They claimed that such a requirement would deter a significant number of alleged ITFS speculators. Accordingly, we released a Further Notice of Proposed Rulemaking in which we addressed their suggestions, as well as other proposals to further enhance processing efficiency.

7. In the Further Notice, we tentatively concluded that a window filing system would serve the public interest. Currently, for instance, simply to allow the release of an "A" cut-off list, each application must undergo a substantive engineering analysis upon filing. No applications are granted or denied in this stage of processing. Subsequently, after the "B" cut-off period, each application undergoes a second technical analysis in order to determine whether it is grantable. Because each of these analyses requires significant resources, eliminating the duplicative step would substantially improve processing efficiency. In addition, the Further Notice found that a window filing procedure would allow us to better control the flow of applications. We also noted that it would prevent speculators from filing against applicants that had appeared on an "A" cut-off list.

8. Based on the record before us, we conclude that adoption of the window filing proposal would allow the Commission to accept, consider, and dispose of ITFS applications in the most efficient and timely manner possible. As a result, we believe that the public interest would be served by our adopting a filing window procedure, as enhanced by the aforenoted proposed electronic filing and processing system and by the other policy and rule modifications adopted herein. Specifically, to diminish the incentive of frequency speculators to submit applications for permits that they intend to later assign for profit, we will limit the allowable consideration for the sale of unbuilt ITFS facilities to out-of-pocket expenses. Also, we refine our rules on granting protected service areas requested for wireless cable lessees by providing such protection solely against subsequently proposed operations. We believe that such a policy will eliminate the practice by some ITFS applicants and licensees of requesting interference protection solely to create mutual exclusivity with otherwise grantable, previously filed ITFS applications. We also adopt other technical proposals that will further streamline our ITFS window application filing system. These improvements, we believe, should expedite the inauguration of new and improved ITFS service and prompt the continued development of the wireless cable service.

Implementation of the Window Filing System

9. Public Notice. At the commencement of this proceeding, the initial Notice asked commenters to address how far in advance a window should be announced. Most commenters directly addressing this issue suggest a 60-day period, noting that this is the same time period

within which parties now have to respond to the release of an "A" cut-off list.[14] In contrast, Hardin and Associates, Inc. (Hardin) suggests the issuance of Public Notices 150-180 days before the first filing window, alleging that nonleasing educators will need more than 60 days to prepare their applications. It also predicts that the likely substantial number of applications submitted in the first window will deter nonleasing educators from filing.[15]

10. We decline to adopt Hardin's proposal. Rather, we agree with the majority of commenters that a 60-day period will provide potential applicants adequate notice.[16] As most commenters observe, this is the same period within which parties currently have to file an application in response to an "A" cut-off list. Thus, educational institutions will experience no change from the existing system in this regard. Notably, there is no indication in the record that this has been an insufficient period of time in the past. Similarly, there is no indication that nonleasing educators need additional time within which to prepare for the initial filing window. Nonleasing educators that have been relying upon funding from the National Telecommunications and Information Administration (NTIA) have not been subject to the ITFS application filing freeze imposed in the Notice and they have not been prevented from preparing and submitting any applications they have chosen to file. Further, we anticipate opening filing windows frequently, providing nonleasing educators, as well as all others, many opportunities to submit their applications.

11. Geographic Scope. Addressing whether the window should be regional or national, one commenter claims that a regional window would expedite processing and give greater certainty to wireless cable operators assembling channels.[17] Another asserts that a national window would encourage the filing of more applications than the Commission could efficiently process, because parties would tender applications solely to avoid losing potential access to most major markets.[18] Some commenters claim that a market-based window would

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[14] E.g., Wireless Cable Association International, Inc. (WCA) Comments at 9-10.

[15] Hardin Further Comments at 1.

[16] Should events in the future demonstrate otherwise, the rules we are adopting today will still allow us to issue a Public Notice more than 60 days before the opening of a window. We also note that interested parties can begin preparing their applications before the release of the Public Notice.

[17] ACS Enterprises, Inc., Cablemaxx, Inc., Multimedia Development Corp., Rapid Choice TV, Inc., Superchannels of Las Vegas, Inc., and Wireless Holdings, Inc. (ACS) Further Comments at 3.

[18] WJB-TV Limited Partnership (WJB-TV) Comments at 11-12.

likely concentrate initially on larger markets, thereby disserving educators located in less populated areas.[19]

12. Potential inefficiencies caused by the submission of a large number of applications during a national window are significantly diminished by our likely adoption of an electronic filing system for ITFS applications, which we expect would substantially accelerate processing.[20] While a regional window system might aid some wireless cable operators' long-term planning, we believe that such a window would unfairly require educators not located within the relevant area to delay their educational plans. Moreover, the rules herein adopted will enhance processing efficiency, as discussed below, thereby reducing any potential negative effect of the submission of a greater number of applications. Finally, a national window will allow all interested parties to commence or continue their ITFS and MDS plans as soon as possible. This will provide the certainty of an imminent filing opportunity to all wireless cable entities, not just those within a restricted geographic area. Therefore, we conclude that educators, as well as wireless cable lessees, will be better served by a national window, which we accordingly adopt.

13. Duration of Window. The Notice also sought comment on how long we should generally keep filing windows open. WCA states that five business days, when combined with the 60-day Public Notice period, should provide ample opportunity for all potential applicants to file.[21] Based on the record before us, we agree. Further, this period is short enough to allow the staff to begin processing an application almost immediately after its receipt, especially if the proposed electronic filing and processing system for ITFS applications is adopted. We note that the low power television service also generally keeps its filing windows open for five business days.[22] Moreover, if this period of time should prove to be insufficient, we retain the flexibility to keep future ITFS windows open for a longer period.

14. Frequency. We next address how often to open a filing window. Some commenters support a fixed schedule, arguing that this would allow educators to plan their proposals in advance of the Public Notice. They also advocate the nondiscretionary opening of a window at least once each quarter, asserting that frequent filing periods are necessary to

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[19] WJB-TV Comments at 11-12; RuralVision South, Inc. and RuralVision Central, Inc. (RuralVision) Comments at 4-5.

[20] See Wireless Cable Filing Procedures, 59 Fed. Reg. at 63748 (Dec. 9, 1994).

[21] WCA Comments at 10.

[22] Section 73.3572(g) of the Commission's Rules, 47 C.F.R. § 73.3572(g).

avoid unduly delaying the licensing of ITFS facilities that are essential to the growth of the wireless cable industry.[23]

15. We believe that we should take a more cautious approach as we structure the window filing system. Because we have never before utilized this kind of filing system for ITFS applications, we cannot yet know what will prove to be the most efficient timetable for the acceptance and disposition of applications. Further, because the rate of the submission of applications could vary significantly in the future, a fixed requirement could quickly and unpredictably become counterproductive or impracticable to meet. As previously indicated, however, we intend to open filing windows as frequently as is consistent with our goals of efficient and expeditious processing.

16. Amendments. Some commenters propose that, after a filing window closes, the Commission should prohibit amendments that demonstrate eligibility, improve comparative standing, or seek rule waivers.[24] Currently, they claim, many applicants impose an unnecessary burden on the Commission by filing such amendments, such as requests for waiver of the four-channel-per-market rule, Section 74.902(d) of the Commission's Rules, 47 C.F.R. § 74.902(d).[25]

17. We agree that amendments that pertain either to improving comparative standing or to establishing eligibility, as set forth in Sections 74.913(b) and 74.932(a) of the Commission's Rules, respectively, 47 C.F.R. §§ 74.913(b) and 74.932(a), should not be filed outside the window period. Similarly, we shall prohibit the filing of amendments to a facility's proposed technical operations, including amendments to add any receive sites, outside the window. Such engineering amendments often require a time-consuming re-analysis by the staff of the amendment's effects on other applications and thus delay the processing of all pending applications. However, with the above two exceptions, such delay

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[23] American Council on Education, American Association of Community Colleges, Arizona Board of Regents for Benefit of the University of Arizona, Association for Higher Education, California State University - Sacramento, Iowa Public Broadcasting Board, South Carolina Educational Television Commission, State of Wisconsin - Educational Communications Board, St. Louis Regional Educational and Public Television Commission, University of Maine System, University of Wisconsin System, and University System of the Ana G. Mendez Educational Foundation (Educational Parties) Further Comments at 8-10; WCA Further Comments at 6-8; ACS Further Comments at 3; American Telecasting, Inc. (American Telecasting) Further Comments at 2-3; Heartland Wireless Communications, Inc. (Heartland) Further Comments at 3; North American Catholic Educational Programming Foundation, Inc., Network For Instructional TV, Inc., and Shekinah Network (North American Catholic) Further Comments at 7-8.

[24] WCA Comments at 8-9; Educational Parties Reply at 6.

[25] WCA Comments at 8, n. 11, citing, e.g., File Nos. BPLIF-920319DL, et al.

is not inherent in non-engineering amendments, including requests for waiver of the four-channel rule, and we will consequently permit their filing.

Exceptions to the Filing Window

18. NTIA-Funded Proposals. In the Further Notice, we advanced a proposal designed to assure fairness to applicants relying on NTIA funding. We noted that NTIA rules require a party seeking a grant to have already filed its application with the Commission, and that those requests are subject to an annual January deadline. Accordingly, in order not to obstruct these grants, we proposed allowing applications that rely upon NTIA funding to be filed each December. We proposed to consider such applications, if filed outside a window period, as having been filed during the next window. We now adopt that proposal, with a slight modification, because NTIA funding deadlines may vary from year to year. Accordingly, during the 30 days preceding the annual deadline, rather than every December, we shall allow the tendering of applications that rely upon NTIA funding, and they shall be considered as having been filed during the current or immediately subsequent window, whichever is appropriate.

19. Major Changes. Several commenters also propose various exceptions to the window filing system. The Educational Parties propose that applications for major changes be exempt from the window filing requirement. They claim that such changes are needed to resolve coverage problems discovered only after the facilities begin operation. Further, they argue that such applications constitute only a small proportion of ITFS applications submitted to the Commission. In the alternative, some commenters propose the opening of additional windows solely for such applications.[26]

20. We decline generally to exempt the filing of major change applications from the window filing process, and, as discussed at paragraph 17, above, we similarly decline to exempt amendments with similar effects. By definition, such changes can substantially impact both existing and proposed facilities. Accordingly, for the purpose of the window filing procedure, they should be treated the same as applications for new facilities. However, consistent with existing practice, we shall continue to make a narrow exception for amendments to pending applications that would resolve mutually exclusive applications without creating any additional interference. We will accept such amendments at any time, and we shall provide a 30-day period for the submission of petitions to deny those amendments. We believe that this will most efficiently bring new or improved service to the public. Further, to encourage market settlements, we shall now allow licensees of existing facilities to submit at any time applications for major changes, as long as the changes are essential components of a settlement involving mutually exclusive applications.

[26] Educational Parties Comments at 12-13; WCA Reply at 5-6.

21. Other Proposals. The Educational Parties propose that educators have an additional 60 days after the close of the filing window to file mutually exclusive applications against any MDS application for an ITFS channel.[27] These parties argue that the "A" cut-off list currently provides such a period, to ensure the continued availability of ITFS channels to educators. We decline to adopt the proposal. A wireless cable entity will continue to be ineligible to file for an ITFS channel unless a specified number of vacant channels would remain available for ITFS use after the proposed authorization.[28] Further, as now, we generally will not consider an MDS application that is mutually exclusive with an ITFS application.[29] These rules protect the rights of educators to acquire ITFS licenses, and they ensure their continued availability as against MDS applicants. Also, all educators have the same opportunity as wireless cable entities to prepare and apply for a particular ITFS frequency during a particular filing window. If no educator has expressed an interest in a certain channel, we see no reason to delay the efficient use of that frequency by another entity, especially when other ITFS frequencies are available to accommodate the needs of local educators. We believe that this will allow for the most efficient use of the spectrum.

22. National ITFS Association (NIA) proposes that when an application is filed by a nonlocal applicant with an excess capacity lease, the window should remain open for another 60 days to allow for the filing of competing applications by local nonleasing educators. According to NIA, this would protect plans that otherwise would be made obsolete by another party's filing during a window that would occur before the educator could prepare and file its own application.[30] More expansively, California State University, Northridge (CSU Northridge) advocates a blanket exemption from the window for all educators not associated with a wireless cable lessee, alleging that such an exemption would allow such educators to rapidly meet their communities' changing needs. It predicts that few applications would fall within this category, thus making inconsequential any resultant burden on the Commission's processing. To prevent abuse of this exemption, the commenter would prohibit the applicant from leasing its excess capacity for three years after grant of the license.[31]

23. We do not believe that either NIA or CSU Northridge's proposal would serve the public interest. Both would cause significant disruption to the window filing system. Further, we see no reason to distinguish between educators with and without excess capacity

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[27] Sections 74.990-992 of the Commission's Rules, 47 C.F.R. §§ 74.990-992, set forth the limited circumstances under which an MDS entity may file in its own right for an ITFS channel.

[28] Section 74.990(a) of the Commission's Rules, 47 C.F.R. § 74.990(a).

[29] Section 74.990(e) of the Commission's Rules, 47 C.F.R. § 74.990(e).

[30] NIA Comments at 4.

[31] CSU Northridge Further Comments at 1-2.

leases for these purposes. The public interest served by educational programming is not diminished by a licensee's affiliation with a wireless cable operator, which over the past several years has often been the only way to finance its ITFS facility. Moreover, in order for the proposals to have their intended effect, we would have to prohibit educational licensees without excess capacity leases from later leasing their excess capacity. Such a prohibition could harm educators by adversely impeding the development or continuation of ITFS service. We therefore decline to adopt these proposals.

PROPOSALS TO IMPROVE THE APPLICATION PROCESS

24. As argued by the commenters and noted in the Further Notice, the goals of the proposed window filing procedure could be maximized if we at the same time enacted additional rules that would increase its efficiency. Therefore, we set forth several proposals, many initially advanced by the commenters, that were intended to improve service to the public or otherwise enhance processing efficiency. Our analysis of each of the proposals will be affected by two factors. First, as noted above, we plan to implement an electronic filing and processing system for ITFS applications, thereby greatly accelerating their disposition. Adoption of this system would diminish the negative impact that a large number of applications has had on our processing in the past. Second, implementation of the proposals adopted herein and strict enforcement of our existing rules will, we believe, eliminate many of the inefficiencies and alleged abuses of the existing processing system.

Financial Qualifications

25. Proposal. In response to the Notice, two commenters[32] proposed to require applicants or their prospective wireless cable lessees to submit with their applications proof of their financial ability to construct.[33] In the Further Notice, we postulated that such a requirement might deter a significant number of ITFS speculators. We also asked whether we should require separate financial documentation for each station applied for, and whether we should require the wireless cable lessee to submit the documentation when it is paying for construction of the facilities. In addition, we asked whether such documentation would likely become the basis of frivolous petitions to deny.[34]

26. Comments. Hispanic Information and Telecommunications Network, Inc. (HITN) and ACS dispute the assertion that speculation is a problem, arguing that the majority of channels in the most desirable markets have now been licensed. Thus, they aver that no

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[32] WJB-TV Comments at 9-10; WCA Reply at 3-4.

[33] Currently, applicants are required to certify their financial ability or their reliance upon NTIA funding.

[34] Further Notice at 3350.

change in the application process is necessary.[35] While other commenters regard speculation as a continuing problem, most nevertheless oppose a change. They argue that compiling the necessary documentation could impose a significant burden on educational institutions, especially those not leasing their excess capacity. Further, they assert, any enhanced processing efficiency would be countered by the diversion of the staff resources needed to analyze each financial submission.[36] In addition, according to these commenters, the requirement could easily become a basis for frivolous petitions, further delaying the grant of applications.[37] In their opposition, then, HITN, ACS, and RuralVision are in accord with the Educational Parties, who had earlier supported the proposal,[38] but who now oppose it.

27. Supporters of changing the existing certification requirement generally address the financial qualifications of the excess capacity lessee, rather than of the educator.[39] Various options supported by these commenters include: requiring the wireless cable lessee to certify its qualifications as part of the ITFS application;[40] requiring certification from the lessee, but also requiring the educator applicant to possess detailed supporting financial documents;[41] and requiring educators and lessees to demonstrate, not merely certify, their financial qualifications in the application. With regard to the last variant, Central Texas alleges that, because the submissions would include audited financial statements, the staff would not expend significant resources in its analysis.[42]

28. Also, proponents of changing the existing certification requirement generally would require the wireless cable operator, in demonstrating its financial qualifications, to

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[35] HITN Further Comments at 3; ACS Further Comments at 6.

[36] E.g., RuralVision Further Comments at 3-4; Educational Parties Further Comments at 11-13.

[37] HITN Further Comments at 4; RuralVision Further Comments at 3-4.

[38] Educational Parties Reply at 3.

[39] See, e.g., Central Texas Wireless TV, Inc. (Central Texas) Further Comments at 3-4.

[40] WCA Further Comments at 21-22.

[41] North American Catholic Further Comments at 2-3; American Telecasting Further Comments at 6.

[42] Central Texas at 3-4; United States Interactive and Microwave Television Association (US Interactive) Further Reply at 2-3. Under this proposal, educators without excess capacity lessees would continue to certify their financial qualifications, as they do now.

incorporate all of its obligations to construct and operate any other ITFS facilities.[43] To discourage abuse of any new informational requirement, they propose, the Commission should perform random spot checks on applicants and their lessees.[44]

29. Discussion. ITFS applicants must have reasonable assurance that sufficient net liquid assets are on hand or available from committed sources to construct and operate the station for three months without additional funds. The applicant certifies that it has such access, and the Commission relies upon that certification. The record does not indicate that our reliance in this regard has been ill-placed. Further, we believe that the submission of detailed financial information would in practice neither increase processing efficiency nor deter abuse. Collecting the data would impose significant costs on the wireless cable lessee, regardless of whether the supporting documents were kept on hand by the educator or submitted to the Commission. We believe that a sound analysis of all of the incoming detailed financial submissions would consume a great deal of the staff's time, severely slowing the rate of processing. Conversely, any reliance on the documents without our own rigorous independent analysis would enable us to detect only a small proportion of potential abuse. Moreover, the record contains no information diminishing our concern that the financial information submitted would become fodder for frivolous petitions to deny.

30. A financially unqualified educator would generally not be able to complete construction within the prescribed period. Because that educator would then need an extension of time within which to construct, it would have to submit an appropriate application to the Commission, explaining the reasons for its delay in construction. Thus, we already have a process in place by which we can monitor and assess ITFS licensees' progress in constructing their authorized facilities and forestall any dilatory conduct on their part. Should it become necessary in the future, we can revise this process accordingly.

Application Caps

31. Proposals. We now address two proposals, raised in response to the Notice by the Educational Parties, to limit the number of certain types of applications that can be filed during a filing window.[45] The first would impose a cap of 25 applications associated with the same wireless cable entity, including any entity with direct or indirect common ownership or control. The second proposal would limit an individual nonlocal ITFS entity to filing no more than three to five applications during a window. To support this restriction, the

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[43] E.g., WCA Further Comments at 21; North American Catholic Further Comments at 2-3.

[44] WCA Further Comments at 21-22; North American Catholic Further Comments at 3; American Telecasting Further Comments at 6.

[45] Further Notice at 3350-51.

Educational Parties argued that nonlocal applicants often work with wireless cable entities as frequency speculators.[46]

32. Comments. The overwhelming majority of interested commenters oppose the adoption of either type of cap. Many stated that such restrictions would significantly restrain ongoing efforts to create viable wireless cable and ITFS systems.[47] First, with regard to the wireless cable cap, one commenter alleges that a limitation would prevent wireless cable companies from utilizing the economies of scale that currently benefit their wired cable competitors.[48] Also, RuralVision contends that a school district's need for educational programming is no less compelling when its excess capacity lessee has similar leasing agreements with different parties.[49] Only one commenter supports an outright cap based on the identity of the wireless cable lessee, arguing that it would speed processing and prevent wireless cable entities from overextending themselves.[50] A few commenters would support such a cap only if it excluded the operators allegedly most likely to construct, i.e., those that already have access (by license or by lease) to a specified minimum number of MDS and/or ITFS channels in the area.[51]

33. The proposed cap on nonlocal ITFS entities is similarly unsupported by many of the commenters addressing the issue. ACS asserts that it is unnecessary, as the window filing system will eliminate most of the problems associated with speculation.[52] Also, North American Catholic contends that nonlocal educational entities, due to their economies of scale, are critical to bringing distance learning to many schools that otherwise might not be able to afford it. It adds that nonlocal entities serve important area needs, noting that they must submit letters of intended use from local accredited schools to establish their basic eligibility

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[46] Educational Parties Comments at 14-15; Educational Parties Reply at 6-7. Citing Section 73.3564(d) of the Commission's Rules, 47 C.F.R. § 73.3564(d), the commenter notes that in low power filing windows, the Commission limits the number of filings by commonly controlled entities.

[47] See, e.g., Educational Parties Further Comments at 13-14; Heartland Further Comments at 4-5.

[48] National Micro Vision Systems, Inc. (National Micro Vision) Further Comments at 2.

[49] RuralVision Further Comments at 5.

[50] Central Texas Further Comments at 5-6.

[51] See, e.g., Educational Parties Further Comments at 13-14; WCA Further Comments at 22-24.

[52] ACS Further Comments at 8-9.

for the license.[53] Supporters dispute that claim, with one arguing that nonlocal entities lack community ties, are less familiar with local programming needs despite the local programming committee's input, and tend to associate with frequency speculators.[54] Further, according to the Educational Parties, the Commission already treats local and nonlocal applicants dissimilarly through the ITFS license eligibility criteria, thus setting a precedent for disparate treatment in this area.[55]

34. Discussion. Adoption of either of the proposed restrictions would certainly eliminate any processing burden and limit multiple filings associated with potential frequency speculators. However, these benefits would come at immense cost. To suddenly impose limits on the number of applications that particular parties may be affiliated with would slow both ITFS and wireless cable development. Further, it would artificially constrain MDS operators' business decisions as to the number of ITFS channels needed to establish economically viable wireless cable operations. These costs would not be sufficiently offset by exempting applications associated with wireless cable entities that already have a significant market presence, as this would unfairly penalize an educator for exercising its discretion as a licensee to lease excess capacity to a particular party. Moreover, suggestions by some commenters that nonlocal entities are not adequately serving local educational needs are unsupported. Finally, we can deter the speculation complained of by the less restrictive process of analyzing construction extension applications, as noted above at paragraph 30. Accordingly, based on the record before us, we decline to adopt either of the proposed application caps.

Assignment of Unbuilt Facilities

35. In the Further Notice, we proposed to formalize our current practice of limiting the allowable consideration for the assignment of authorizations for unbuilt ITFS facilities to out-of-pocket expenses, as we do with broadcast construction permits. Our stated goal was to diminish the incentive of frequency speculators to submit applications for authorizations that they intend to later assign for profit.[56] Every commenter addressing this issue supports the proposal, agreeing that it would help deter abuse.[57] We agree that this limitation, applicable to broadcast construction permits, will have similar deterrent effects on frequency speculation

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[53] North American Catholic Further Comments at 5-6, citing Section 74.932(a) of the Commission's Rules, 47 C.F.R. § 74.932(a).

[54] Central Texas Further Comments at 5.

[55] Educational Parties Further Comments at 15.

[56] Further Notice at 3351.

[57] E.g., ACS Further Comments at 11; WCA Further Comments at 29; Central Texas Further Comments at 7; and Educational Parties Further Comments at 16-17.

in the ITFS service, and we shall therefore adopt it. Therefore, licensees assigning construction permits for unbuilt ITFS facilities will have to submit documentation of their reasonable and prudent out-of-pocket expenses with their assignment applications.[58] American Telecasting suggests that we extend the rule to cover wireless cable lessees, claiming that the rule as proposed does not preclude speculation in excess capacity leases. We decline to do so. As wireless cable entities accumulate channels or channel access in various markets, they approach the critical mass necessary to operate competitive MDS systems. Therefore, acquisition of a small number of additional channels may be integral to the inauguration of a wholly new video service to an area's population, and restricting the alienability of ITFS leases might delay the orderly completion of viable MDS systems.

Excess Capacity Lease Terms

36. Proposal and Comments. Our existing policy does not authorize an educator to execute a lease agreement the term of which extends beyond the end of the educator's license term.[59] Consequently, depending on how many years remain in the term, there may be situations in which our policy would prohibit a lease agreement to extend beyond one or two years. At most, MDS operators can have contractual access to ITFS channels for no more than ten years, the length of a full license period. ACS, supported by WCA and CAI Wireless Systems, Inc. (CAI), proposes that we modify our policy to allow parties to negotiate lease agreements whose terms extend beyond the end of the license term. The proposal is unopposed.

37. The proponents of this proposal argue that a wireless cable operator can have no assurance that it will be able to retain beyond the ITFS license term its leasehold rights for its use of the ITFS channels. Pursuant to existing Commission policy, an educator wishing to afford the MDS operator a reasonable lease term is prohibited from agreeing to extend the lease agreement beyond the current ITFS licensee's term. According to the commenters, this significant uncertainty deters potential financiers from investing in new MDS systems. CAI adds that it also negatively affects negotiations over possible future business arrangements with telephone companies, such as those involving video distribution agreements.[60]

38. Discussion. We are mindful that the wireless cable industry requires substantial equity investment in order to become a viable competitor in the video marketplace. We also realize that a potential financier is likely to exercise caution before investing in an MDS system, where there is uncertain long-term availability of the ITFS channels that provide the

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[58] Cf. Section 73.3597(c)(2) of the Commission's Rules, 47 C.F.R. § 73.3597(c)(2).

[59] See, e.g., Blackwell Consolidated Independent School District, 9 FCC Rcd 1721, 1722 (1994).

[60] ACS Further Comments at 19; WCA Further Reply at 21-22; CAI Further Reply at 8-11.

basic capacity for that system. The record demonstrates that adoption of the unopposed proposal to extend the allowable lease term would have substantial benefits. Authorizing lease agreements that extend beyond the end of the license term would reduce the anxiety of potential investors that the MDS entity would shortly lose four channels, crippling the entire system: a ten-year lease appears far more reliable and stable than a two-year lease. The increased confidence of investors will significantly accelerate the development of the wireless cable industry and provide competition to wired cable. Hence, we are revising our policy to permit an educator, if it chooses, to execute a 10-year lease agreement without regard to the duration of the educator's current license term. In previous cases, the Commission granted ITFS licenses subject to the revision of lease provisions that extended beyond the 10-year license term because such provisions were viewed as inconsistent with the terms of the license.[61] Upon reexamination of this issue, however, we conclude that the policy adopted here better serves the public interest. The existence of a lease in no way affects the duration of that license or the licensee's future use of the frequency, but it nevertheless allows the benefits discussed above. Thus, we will require only that ITFS lease agreements that extend beyond the end of the license term note that such an extension is contingent on the renewal of the educator's license. As a result, our policy in this regard becomes similar to that governing television broadcast licensees and their network affiliation agreements.

Application of the Four-Channel Rule

39. Proposal. We seek to provide as many educators as possible with the opportunity to operate ITFS systems that meet their educational needs. Consequently, the four-channel limitation rule, Section 74.902(d) of the Commission's Rules, 47 C.F.R. § 74.902(d), generally limits an ITFS licensee to four channels for use in a single area of operation. However, because we have never formally defined what constitutes an "area of operation," educational institutions at times have been uncertain as to what channels they could apply for, and unsure as to when a four-channel rule waiver showing was required. The Further Notice proposed to adopt the staff's informal policy of considering a single area of operation for this purpose to extend no farther than 20 miles from the transmitter site. We posited that such a clear benchmark would be easy for applicants to comply with and, due to its ease of application, would also increase the speed of processing. Alternatively, we queried whether we should instead define an area of operation in terms of interference, such that two sites would be considered to be in different areas of operation, as long as a licensee could operate at maximum authorized power on the same channel at each site without co-channel interference.[62]

40. Comments. A number of parties addressing the issue oppose a standard based on mileage. ACS argues that the use of 20 miles as a benchmark would be arbitrary and

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[61] See, e.g., Rock Port R-II Schools, 9 FCC Rcd 7342, 7343 (1994).

[62] Further Notice at 3351.

inconsistent with the Commission's statement, in a discussion of an unrelated rule elsewhere in the Further Notice, that an educator is unlikely to serve a site that is more than 35 miles from the transmitter.[63] In this regard, some commenters contend that many ITFS stations serve sites more than 20 miles from the transmitter.[64] Under a mileage-based definition, HITN argues that two cochannel stations more than 20 miles apart would be considered to be in different areas of operation, even if they would in fact interfere with each other. Thus, HITN and RuralVision advocate the proposed interference-based definition.[65] One commenter advocates combining the two proposals. Specifically, Central Texas supports the 20-mile definition, but adds that, if an applicant could show that two sites less than 20 miles apart could nevertheless operate without co-channel interference, it should be allowed to operate up to four channels at each site without violating the rule. The commenter classifies this as a flexible approach that takes area terrain into account. It also helps large rural areas served by only a few schools that are qualified to become ITFS licensees, according to Central Texas.[66]

41. A few commenters, broaching a definition not advanced in the Further Notice, propose to link the definition of an "area of operation" to the facility's protected service area, thereby making the rules governing ITFS and MDS more consistent.[67] To foster the expansion of ITFS service, North American Catholic recommends waiving the rule for any applicant proposing more than four channels within the 15-mile protected service area, as long

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[63] ACS Further Comments at 12, citing Further Notice at 3352. The two rules have different purposes, as we discuss further at paragraph 60, below.

[64] CSU Northridge Further Comments at 2; RuralVision Further Comments at 6-7.

[65] HITN Further Comments at 7-9; RuralVision Further Comments at 6-7.

[66] Central Texas Further Comments at 7-8.

[67] North American Catholic Further Comments at 5; Hardin Further Comments at 2; ACS Further Comments at 12. The protected service area is discussed more fully below, at paragraph 45.

as there are no competing applications for those channels.[68] The Educational Parties also advocate a definition not discussed in the Further Notice, based on whether the second facility is necessary to serve receive sites that cannot reasonably be served by the first. Specifically, if all of a second facility's proposed receive sites can be served by both facilities, the stations would be duplicative and considered to be in the same area of operation. Thus, they add, some service overlap would be acceptable if it were the only way to reach some receive sites.[69]

42. Discussion. Having examined the record before us, we find that the mileage proposal that is currently in use by the staff should be the basis of the rule. Our experience has demonstrated that this standard is efficient and easily understood and implemented. Determining a station's area of operation by use of the interference approach would require a considerable amount of technical analysis by the staff. As a consequence, adoption of this proposal could inordinately slow processing and delay service to the public. We also see no reason to link the four-channel rule to the conceptually unrelated protected service area. The protected service area is based on the service area of a commercial wireless cable entity; the four-channel rule's area of operation is based on the educational needs of the ITFS licensee. Further, neither the record nor our experience suggests that an educator's area of operation is in fact limited to the smaller 15-mile area covered by the protected service area and should accordingly be diminished from the currently applied standard. Indeed, as noted above, several educators have commented that, not infrequently, ITFS facilities serve receive sites more than 20 miles away.

43. We also reject the Educational Parties' proposal that we base our definition on whether the second facility is necessary to serve receive sites that cannot reasonably be served by the first. This proposal would be susceptible to significant abuse, because it would allow applicants to design a series of closely spaced systems, each with one or a few receive sites that could not be served by the prior system. These systems would then be considered to be in separate areas of operation, despite the substantial overlap in service area that could result. We do not believe that this result would be consistent with our intent to preserve as much channel capacity for as many educational applicants as possible.

44. In adopting the 20-mile criterion, we recognize that any mileage standard will be imprecise, because there will always be educators that serve sites beyond the designated distance. However, the bright-line test we are adopting today has the important advantage of being easy for applicants to comprehend and apply. Further, the Commission staff can

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[68] North American Catholic Further Comments at 5. A smaller area would allow an educator to place receive sites without a waiver in locations for which it would otherwise need a waiver, i.e., between 15 and 25 miles from the transmitter. Thus, a licensee would be able to have more receive sites, and they could be located more compactly.

[69] Educational Parties Further Comments at 17-18.

process applications far more efficiently using this standard. Moreover, Commission staff, educators, and wireless cable entities are extremely familiar with this standard, having utilized it for a number of years. Thus, it will foster much more rapid processing of applications and inauguration of service to the public. Our long experience with the 20-mile standard suggests that it is a practical and effective tool. We also note that many of the concerns expressed by the commenters can continue to be addressed on a case-by-case basis. Specifically, if an applicant can present good cause to waive the four-channel rule, we will consider the public interest benefits of doing so.[70]

Protected Service Areas

45. Proposal. The Further Notice also solicited comment on a proposed change in the application of protected service areas for wireless cable lessees. Currently, we provide a 15-mile interference protection for a service area regardless of receive site locations, but solely at the request of the ITFS applicant or licensee. Generally, this benefits the wireless cable lessee, because it ensures interference protection within an area where receive sites are not specified, or extends protection over an area where receive sites are not currently located. By so doing, these areas provide a measure of protection to lessees, thereby encouraging new or improved wireless cable service.[71]

46. The Further Notice observed that an applicant for new facilities often requests and receives interference protection that restricts an existing licensee lacking such protection from pursuing certain modifications to its facilities. At the same time, an existing facility that has not requested such protection, upon learning that an application for a nearby operation has been filed, often requests interference protection and possibly obstructs the new applicant. The Further Notice expressed the view that these practices may be an abuse of our processing system that diminishes competition, significantly impacts our processing, and delays the inauguration of new or improved service to the public. Moreover, we stated, such practices unfairly disrupt existing operations and already-proposed facilities. We therefore proposed to apply interference protection only prospectively, making it effective solely with regard to applications filed after the protection request. We asked commenters whether our proposal would sufficiently diminish the disruption and delay resulting from the current system. We also asked commenters to address a specific application of the proposed rule: If two applications are (1) submitted during the same filing window, (2) otherwise grantable, and (3)

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[70] See WAIT Radio v. FCC, 418 F.2d 1153 (1969). Our action herein, we believe, meets the directive of the court to analyze and clearly define an "area of operation" for the purposes of the four-channel rule. See also Hispanic Information and Telecommunications Network, Inc. v. FCC, 865 F.2d 1289 (D.C. Cir. 1989), remand pending.

[71] Wireless Cable Reconsideration at 6765-67.

mutually exclusive only because both applicants request a protected service area, we proposed to consider them as mutually exclusive.[72]

47. Comments.[73] Only two parties oppose the proposal to apply the 15-mile protected service area prospectively only: the Educational Parties, who claim that there has been no abuse of the protected service area,[74] and United States Interactive and Microwave Television Association, who claims it would not deter frequency speculators.[75] Most commenters addressing the proposal express support.[76] HITN advocates the proposal, but would exempt existing facilities. According to HITN, wireless cable lessees must be able to apply the protected service area regressively, in order to address what it claims is the most frequent abuse of the protected service area. Specifically, according to the commenter, another wireless cable operator often finds a number of educators to apply for licenses in several small markets that encircle a larger market, thereby shrinking the larger market's service area by their protected service areas. HITN claims that this hinders the future, orderly development of wireless cable systems in large markets, and that its proposed exception is needed to prevent further abuse.[77]

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[72] Further Notice at 3352.

[73] Some commenters request a redefinition of the protected service area. However, discussion of that issue would be inappropriate, because it is already under consideration in another proceeding. See Report and Order in Gen. Docket No. 90-54, 5 FCC Rcd 6410 (1990), recon. granted on other grounds, 6 FCC Rcd 6764 (1991), petition for recon. pending.

[74] Educational Parties Further Comments at 19.

[75] United States Interactive and Microwave Television Association Further Reply at 3.

[76] Central Texas Further Comments at 8-9; Heartland Further Comments at 10-11; RuralVision Further Comments at 10-11.

[77] HITN Further Comments at 9-10.

48. Four commenters address whether we should consider as mutually exclusive two applications that are submitted during the same filing window, otherwise grantable, and mutually exclusive only because both applicants request a protected service area. United States Interactive and Microwave Television Association opposes the proposal, again claiming that it would not deter speculators.[78] RuralVision and WCA, however, profess support.[79] The former commenter also proposes an exception under a particular set of circumstances. Specifically, RuralVision proposes that this aspect of the rule be waived if the applicant can demonstrate that (1) less than five percent of another applicant or licensee's protected service area would receive interference, and (2) the nature of that area is such that no subscribers or potential subscribers would be affected by the interference (within a lake, for example). Under such circumstances, it states, the applications should not be considered mutually exclusive.[80] Opposing RuralVision's proposed exception, WCA responds that the Commission has already rejected automatic waiver of MDS interference protection standards where the interference is minimal.[81]

49. Finally, two commenters propose that the Commission in the future grant the protected service area automatically, unless specifically declined by the applicant.[82] One of these commenters also requests the Commission to grant 15-mile protected service areas to all current licensees and applicants, to the extent that they have such reach after consideration of all previously filed applications.[83]

50. Discussion. For the reasons stated in the Further Notice, we conclude that the public interest will be served by adoption of the proposal to apply protected service area protection only prospectively. Thus, an applicant for new facilities will no longer be able to receive interference protection that restricts an existing licensee without such protection from seeking certain modifications to its facilities. Similarly, an existing facility without such protection will not be able to request interference protection that obstructs the new applicant. Adoption of the proposal will diminish disruption to existing and proposed facilities. We reject, however, HITN's proposed exception concerning existing facilities. For more than three years, ITFS licensees have been afforded the unrestricted opportunity during their initial construction periods and thereafter to request protection for their facilities, if they so chose.

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[78] United States Interactive and Microwave Television Association Further Reply at 3.

[79] RuralVision Further Comments at 10-11; WCA Further Comments at 18-19.

[80] RuralVision Further Comments at 10-11.

[81] WCA Further Reply at 17, citing Family Entertainment Network, Inc., 9 FCC Rcd 566, 567 (1994).

[82] Heartland Further Comments at 11; HITN Further Comments at 10.

[83] HITN Further Comments at 10.

The record does not reflect any obstacle to any wireless cable operator's having requested, through the ITFS applicant or licensee, a protected service area. Moreover, adoption of HITN's proposal is not necessary to eliminate the abuse complained of. With the adoption of a window filing process, the problem we identified in the Notices, of existing licensees filing minor change applications creating mutually exclusive situations with pending applications, will be eliminated. The window filing process will prevent the identification of pending applications that could be obstructed by the licensee's filing of such minor change application, and further ensure that the submission of a protected service area request is principally motivated by the licensee's desire to enhance or expand its own system.

51. Only one commenter expressed opposition to the proposed specific application of the rule involving mutual exclusivity. With regard to the proposed exception advanced by RuralVision, we shall adopt it in part. We agree that there is no public interest benefit in protecting an uninhabitable area. To do so would needlessly restrict neighboring facilities, unduly depriving the area of both ITFS and wireless cable programming. Thus, if an applicant shows that interference will occur solely over water, we shall not consider the applications to be mutually exclusive. However, in order to avoid future conflicting interpretations and confusion, we will not extend the exception to cover any area in which no subscribers or potential subscribers would be affected by the interference.

52. We decline to adopt RuralVision's proposal that two applications not be considered mutually exclusive if less than five percent of one applicant or licensee's protected service area will receive interference from the other's facilities. We find no support in the record for diminishing the protection we have afforded excess capacity lessees as an incentive for them to construct viable ITFS and wireless cable facilities. Moreover, we find only minimal countervailing public interest benefits in the proposal. While some additional facilities might be constructed, many viewers could be deprived of the quality reception that the Commission has always held as a standard. Indeed, the emerging wireless cable industry is less likely to successfully compete with cable if subscribers cannot enjoy the highest quality reception reasonably possible.

53. Finally, we decline to adopt the proposals automatically to grant protected service areas to all current licensees, all current applicants, and all future applicants. As noted above, applicants and licensees have had no obstacle to requesting a protected service area on their own. We also shall not automatically grant protected service areas in the future, as such protection may in fact not be desired or utilized by the applicant. We are also changing our application form and expressly asking whether the applicant seeks this protection. This will further expedite processing.

Receive Site Interference Protection

54. Proposal. The Commission's rules currently provide interference protection to an educator's receive sites, regardless of their distance from the transmitter. The Further Notice cited instances in which interference protection was requested for receive sites

apparently beyond an educational institution's reasonable coverage area. We stated in the Further Notice that such requests could be an abuse of our processes, designed to artificially increase the service area of the wireless cable lessee. We also opined that eliminating this practice would significantly increase the efficiency of our processing of applications, thereby hastening service to the public.

55. We tentatively concluded that an educational institution is generally unlikely to reasonably serve a receive site located more than 35 miles from the transmitter. Thus, absent a showing of unique circumstances, we proposed to protect only those receive sites 35 miles or less from the transmitter. Further, we proposed that an applicant not be able to claim basic eligibility for a license by use of any receive site more than 35 miles from the transmitter.[84]

56. Comments. The commenters are nearly evenly divided on whether to adopt the 35-mile standard for receive site interference protection. Opponents argue that the mileage standard is arbitrary, not reflecting that educators may legitimately serve sites beyond 35 miles from the transmitter, especially in rural areas.[85] ACS, WCA, and HITN propose that all receive sites within the protected service area should automatically be protected.[86] HITN would deny protection to any receive site outside the protected service area, asserting that this clear demarcation would deter abuse.[87] Several other commenters, however, argue that any receive site that can in fact be adequately served should be eligible for receive site interference protection, regardless of location.[88]

57. In contrast, the 35-mile standard was supported by several commenters,[89] many of whom would also incorporate the interference test. They propose automatic interference protection for receive sites within the 35-mile limit, and a rebuttable presumption that farther receive sites cannot adequately be served. An applicant demonstrating otherwise would

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[84] Further Notice at 3352.

[85] ACS Further Comments at 14; CSU Northridge Further Comments at 2; RuralVision Further Comments at 12-13; WCA Further Comments at 37-39.

[86] WCA supports a rebuttable, rather than absolute, presumption that such receive sites can be adequately served. Also, WCA's suggestion assumes the adoption of its proposed redefinition of the protected service area, discussed above. WCA Further Comments at 37-39.

[87] HITN Further Comments at 10.

[88] North American Catholic Further Comments at 4; WCA Further Comments at 37-39; RuralVision Further Comments at 12-13; ACS Further Comments at 14.

[89] E.g., Vermont Wireless Co-operative (Vermont Wireless) Further Comments; Educational Parties Further Comments at 19-20; Central Texas Further Comments at 9.